

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERIC ROGERS,

Plaintiff,

-against-

BURRITO Y MAS, CORP., and 1571
LEXINGTON LLC,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/7/2021

1:19-cv-10333 (MKV)

ORDER OF
DISMISSAL

MARY KAY VYSKOCIL, United States District Judge:

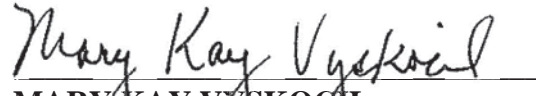
The Complaint in this action was filed on November 6, 2019 [ECF No. 1]. Defendants were served, but never responded to Plaintiff's complaint. *See* ECF No. 6-7. After significant delay, Plaintiff sought a default judgment [ECF No. 16], but the Court denied the motion without prejudice to refiling due to noncompliance with the Court's Individual Practices. *See* Order, ECF No. 21. Plaintiff's second default motion was denied for similar reasons. *See* Order, ECF No. 26. However, since the second motion was denied on December 2, 2020, Plaintiff has taken no action to prosecute this case. Accordingly, it is hereby:

ORDERED that the above-captioned action is discontinued for failure to prosecute without costs to any party and without prejudice to restoring the action to this Court's calendar if the application to restore the action is made by **May 7, 2021**. Any application to reopen this case must also explain why Plaintiff delayed in refiling his motion for default judgment, and must include a proposed schedule on which Plaintiff will file any such motion.

If no such application is made by that date, today's dismissal of the action is with prejudice. *See LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 (1962)).

SO ORDERED.

Date: April 6, 2021
New York, NY


MARY KAY VYSKOČIL
United States District Judge